

Federal Communications Commission

DA 01-1539

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments,  
FM Broadcast Stations.  
(Las Vegas and Pecos, New Mexico)

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MM Docket No. 01-141  
RM-10146

RECEIVED

NOTICE OF PROPOSED RULE MAKING

Adopted: June 20, 2001

Released: June 29, 2001

Comment Date: August 20, 2001

Reply Comment Date: September 4, 2001

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Meadows Media, LLC ("petitioner"), permittee of FM Station KTRL, Channel 275C2, Las Vegas, New Mexico, requesting the substitution of Channel 275C3 for Channel 275C2 at Las Vegas, the reallocation of Channel 275C3 to Pecos, New Mexico, as that community's second local FM service, and the modification of Station KTRL's authorization accordingly. Additionally, petitioner requests the allotment of Channel 283C2 at Las Vegas as a replacement for Channel 275C2.<sup>1</sup> Petitioner states that it will apply for Channel 275C3 if allotted to Pecos, and Channel 283C2 if allotted to Las Vegas, New Mexico.

2. Petitioner filed its rule making request pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See, Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that the proposed changes will further the Commission's allotment priorities and will result in a preferential arrangement of allotments since it will provide a first competitive FM service Pecos without depriving Las Vegas of its sole local aural service, and will provide a

<sup>1</sup> As the Commission expressed concern that an earlier proposal in MM Docket No. 00-155, to remove Channel 275C2 at Las Vegas would deprive 974 people within an area of 1,529 square kilometers of a potential second full time aural service, petitioner avers that the requested allotment of Channel 283C2 at Las Vegas will provide such service to the underserved area.

replacement for Channel 275C2 at Las Vegas.<sup>2,3</sup> Petitioner states that it will apply for both Channel 275C3 at Pecos and Channel 283C2 at Las Vegas, if allotted.

3. In further support of its proposal, petitioner advises that the proposed allotment of Channel 275C3 at Pecos is mutually exclusive with the current allotment of Channel 275C2 at Las Vegas.<sup>4</sup> Additionally, petitioner states Pecos is not located within any urbanized area, nor will the reallocation result in the provision of a 70 dBu signal to 50% or more of any urbanized area. Moreover, petitioner states that the reallocation of Channel 275C3 to Pecos will enable it to provide service to 97,398 persons within an area of 5,278 square kilometers, representing an increase of 77,199 persons over its presently authorized facilities. Petitioner also advises that as Station KTRL has not begun operation on Channel 275C2 at Las Vegas, its reallocation request will not result in the loss of service to Las Vegas upon which the public has become reliant, citing Long Beach and Shalotte, North Carolina, 14 FCC Rcd 3832 (1999), Chatom and Grove Hill, Alabama, 12 FCC Rcd 7664; Douglas, Tifton and Unionville, Georgia, 10 FCC Rcd 7706 (1995); Sanibel and San Carlos Park, Florida, 10 FCC Rcd 7215 (1995). Lastly, petitioner remarks that as indicated above, the allotment of Channel 283C2 at Las Vegas will continue the availability of an additional service at that community.

4. We believe the petitioner's proposal warrants consideration as the reallocation request could provide Pecos with its first competitive local FM service without depriving Las Vegas of local aural transmission service,<sup>5</sup> and enable Station KTRL to increase its potential service area. A staff engineering study has determined that the 60 dBu coverage for Channel 275C3 at Pecos contains 78,862 persons and covers 4,803 square kilometers. Moreover, the projected 70 dBu contour at Pecos does not cover any urbanized area. The entire gain area is already well served with five or more fulltime aural services. Additionally, the proposal will not result in a loss area at Las Vegas as requested Channel 283C2 at that community will provide a new service to 53,945

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<sup>2</sup> The Commission's allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. (Co-equal weight is given to priorities (2) and (3).) See, Revision of FM Allotment Policies and Procedures, 90 FCC 2d 88 (1982).

<sup>3</sup> Petitioner advises that as the Commission recently expressed concern that a proposal to remove Channel 275C2 from Las Vegas would result in 974 people within an area of 1,591 square kilometers being deprived of a potential second fulltime aural reception service, the allotment of Channel 283C2 at Las Vegas will provide such service to those people.

<sup>4</sup> The distance between the two communities is 32.5 kilometers (20 miles) whereas a distance of 177 kilometers (110 miles) is required in this instance.

<sup>5</sup> Las Vegas will continue to receive local aural service from AM Stations KNMX and KFVN, as well as noncommercial educational FM Station KEDP, Channel 216A, and commercial FM Stations KMDZ, Channel 244A, KBAC, Channel 251C, and KLVB, Channel 274C3. Additionally, Channel 224A was allotted to Las Vegas in MM Docket No. 00-85, and remains subject to the opening of a filing window. See 15 FCC Rcd 17321 (2000).

persons and an area of 1,286 square kilometers. As petitioner's modification request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 275C3 at Pecos, New Mexico.

5. Channel 275C3 can be allotted to Pecos at the petitioner's specified site located 15.5 kilometers (9.6 miles) southwest of the community, at coordinates 35-40-15 NL and 105-33-06 WL. Additionally, Channel 283C2 can be allotted to Las Vegas, New Mexico at a site located .36 kilometers (.2 miles) northeast of the community at coordinates 35-35-57 NL and 105-12-12 WL, representing the currently authorized site of Station KTRL.

6. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Present</u>	<u>Channel No.</u> <u>Proposed</u>
Las Vegas, New Mexico	224A, 244A, 251C, 264C3, 275C2	224A, 244A, 251C, 264C3, 283C2
Pecos, New Mexico	268C3	268C3, 275C3

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before August 20, 2001, and reply comments on or before September 4, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Barry D. Wood, Esq.  
Paul H. Brown, Esq.  
Wood, Maines & Brown, Chartered  
1827 Jefferson Place, N.W.  
Washington, DC 20036

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of

Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.